

A budget-based adjustment may include a rent comparability analysis.

[63 FR 48953, Sept. 11, 1998; 63 FR 71374, Dec. 28, 1998]

§ 402.6 What actions must an owner take to request section 8 contract renewal under this part?

(a) *Timing and content of request.* For renewals of contracts with expiration dates on or after October 1, 1998, an owner must submit the following information to HUD (or to the contract administrator in the case of a contract under the moderate rehabilitation program) at least 3 months before the expiration date of any project-based section 8 contract on a project or as soon as practicable if the contract expires before January 13, 1999:

(1) A certification that neither the owner nor any affiliate is suspended or debarred;

(2) A comparable market rent analysis (unless the project is eligible under § 402.5(b)(1) or does not have a HUD-insured or HUD-held mortgage, and the owner is not seeking renewal under § 402.4); and

(3) If an owner is seeking contract renewal under § 402.4, the prior fiscal year's audited financial statement for the project and an owner's evaluation of physical condition as provided in § 401.450 of this chapter.

(b) *Interim extension.* While a determination of owner eligibility for a request for renewal under § 402.4 or § 402.5(b)(2) of this chapter is pending, HUD may extend the contract under § 401.600 of this chapter except that the term of the extension will be determined by HUD in its sole discretion.

(c) *Exception for moderate rehabilitation contracts.* Paragraphs (a) and (b) of this section do not apply to requests for renewal of section 8 moderate rehabilitation contracts (other than for single room occupancy dwellings under section 441 of the Stewart B. McKinney Homeless Assistance Act). Separate instructions for renewal requests will be issued by the appropriate HUD official.

[63 FR 48953, Sept. 11, 1998; 63 FR 71374, Dec. 28, 1998]

§ 402.7 Refusal to consider an owner's request for a section 8 contract renewal because of actions or omissions of owner or affiliate.

(a) *Determination of eligibility.* HUD may elect not to consider the request for renewal of project-based assistance if, at any time before contract renewal:

(1) The owner or an affiliate is debarred or suspended under part 24 of this title; or

(2) HUD determines that the owner or an affiliate has engaged in material adverse financial or managerial actions or omissions as described in section 516 of MAHRA, including any outstanding violations of civil rights laws in connection with any project of the owner or an affiliate.

(b) *Dispute and appeal.* An owner may dispute a rejection and seek administrative review under the procedures in subpart F of part 401 of this chapter.

(c) *Consequences of refusal to consider request.* If an owner's request for renewal of project based assistance is rejected under this section, HUD may provide tenant-based assistance under § 401.602 of this chapter.

§ 402.8 Tenant protections if an expiring contract is not renewed.

(a) *Notice of non-renewal or rent increase.* An owner who is not eligible for a Restructuring Plan under the Mark-to-Market Program in part 401 of this chapter but who fails to renew an expiring contract must provide a 180-day notice of non-renewal to tenants and HUD as provided in section 8(c)(9) of the United States Housing Act of 1937 and a 90-day notice to tenants of any rent increase as provided in section 8(c)(8) of that Act. HUD may prescribe the form of the notices.

(b) *If an owner does not give timely notice.* If an owner does not give timely notice of non-renewal or a rent increase, the owner must permit the tenants in assisted units to remain in their units, with no increase in the tenant portion of their rent, for a period of 180 or 90 days, whichever is the required period for the notice that was not given. Each period will begin on the earlier of the date notice of non-renewal was given to the tenants and HUD or the date notice of rent increase

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was given to the tenants, whichever applies, or the date of expiration for the contract. A 90-day period under this paragraph (b) will run concurrently

with any 180-day period under this paragraph (b).

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